

Appl. No. : 09/870,402
Filed : May 30, 2001

REMARKS

Claims 33, 35, 40-42, and 48-67 are currently pending in this application. Claims 33 and 35 have been amended. Support for the amendments to the claims is found in the specification and claims as filed.

Claim Rejections - 35 U.S.C. §112, Second Paragraph

Claims 33, 35, and 40-42 and 48-67 have been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement as regards the functional limitations of the sample collector in lines 16-18. Claims 62-67 are also asserted to disclose limitations not described in the specification as originally filed.

Claim 33 at lines 16-18 recites a sample collector in communication with the second concavity, “wherein the sample collector is removably carried by the aspiration device, and wherein the sample collector maintains a low pressure contact with a distal surface of the nipple throughout a range of axial positions along the longitudinal axis of the second concavity.” The elements recited at lines 16-18 of Claim 33 are fully supported by Claim 10 as filed, and the paragraph beginning at line 1 of page 14 of the specification as filed. Claims 62-67 are also fully supported by Claim 10 as filed, and the paragraph beginning at line 1 of page 14 of the specification as filed. Accordingly, Applicant respectfully requests that the rejections be withdrawn.

Claim Rejections - 35 U.S.C. §112, Second Paragraph

Claim 33, 35, and 40-42 and 48-67 have been rejected under 35 U.S.C. §112, second paragraph, as indefinite.

Claim 33 has been amended to recite “[a] method for detecting a breast cancer in a patient” comprising, *inter alia*, “screening [a] removed carrier fluid for at least one breast cancer marker, wherein a presence of the breast cancer marker indicates a presence of cancerous cells in the breast.” Accordingly, Applicant respectfully requests that the rejections be withdrawn.

Claim Rejection - 35 U.S.C. §103(a)

Claims 33, 35, 40-42 and 53-61 have been rejected under 35 U.S.C. §103(a) as obvious over Hung (US 6,413,228) in view of Hung et al. (US 2002/0007115) and/or Nguyen (US 2002/0086341) and further in view of Covington et al. (US 6,517,513). To articulate a *prima facie* case of obviousness under 35 U.S.C. §103(a), the PTO must, *inter alia*, cite prior art that teaches or suggests all the claimed limitations. *In re Royka*, 490 F.2d 981 (C.C.P.A. 1974).

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It is acknowledged in the Office Action that neither Hung, Hung et al., nor Nguyen teaches using the device recited in the sole pending independent claim. Enclosed herein is the Declaration under 37 CFR §1.132 of Kevin Morton. The Declaration establishes that Covington et al. is not prior art to the present application. The combination of the remaining Hung, Hung et al., and Nguyen references fails to teach or suggest the invention as presently claimed. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Claim Rejection - 35 U.S.C. §103(a)

Claims 33, 35, 40-42 and 48-67 have been rejected under 35 U.S.C. §103(a) as obvious over Love (US 6,221,622) in view of Hung et al. (US 2002/0007115) and Nguyen (US 2002/0086341) and further and further in view of Covington et al. (US 6,517,513).

It is acknowledged in the Office Action that neither Love, Hung et al., nor Nguyen teaches using the device recited in the sole pending independent claim. As discussed above, Covington et al. is not prior art to the present application. The combination of the remaining Love, Hung et al., and Nguyen references fails to suggest the invention as presently claimed. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns that might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,

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